

IN THE FOURTH DISTRICT COURT IN AND FOR UTAH COUNTY,  
STATE OF UTAH

- - - - -	
PROVO RESERVOIR COMPANY, a Corporation,	'
	'
Plaintiff,	'
vs.	'
PROVO CITY, et. al.,	'
	'
Defendants.	'
	'
- - - - -	

ANSWER TO ORDER TO  
SHOW CAUSE and  
COUNTERCLAIM

Civil No. 2888

Comes now David Long, respondent, and answers the plaintiff's  
Order to Show Cause and Motion, as follows:

1. That David Long is now, and since 1952 has been, the owner of  
certain land in Utah County, State of Utah, over which certain tributaries  
of the Provo River flow.

2. Admits that the court in the above entitled case has jurisdiction  
to determine the issue now before the court, and admits that pursuant to the  
decree of the above entitled court entered in 1921, the waters of the Provo  
River and its tributaries were adjudicated, and that there has been appointed,  
under the before mentioned decree and by the State Engineer, a River Com-  
missioner to administer said decree.

3. Admits that the State Engineer has power to appoint water  
commissioners for the administration of the waters of the State of Utah in  
accordance with Section 73-5-1, Utah Code Annotated 1953, and admits also  
that the said State Engineer has appointed a Provo River Water Commissioner,  
who has at times endeavored to administer the waters of the Provo River in  
accordance with the provisions of the decree. Respondent denies that the  
said water commissioner has equitably and properly administered the waters  
traversing the property of David Long, alleges that the said water commis-  
sioner has endeavored to administer the waters in such a way as to take away

the vested water rights of David Long; admits that David Long has at various times refused to follow the instructions of the water commissioner, but alleges that said instructions were contrary to law, and that if so followed they would deprive said David Long of his vested right to the use of the waters.

4. That the said David Long contends that at all times hereunder, he has used in accordance with his legal rights the waters of the tributaries of the Provo River, Bunnell's Fork and Birch Creek, and the South Fork, and that at no time has he violated any law order of the water commissioner.

WHEREFORE, David Long prays that this Order to Show Cause be dismissed.

#### COUNTERCLAIM

Comes now the said David Long, and states by way of Counterclaim:

1. That he has duly filed with the State Engineer a diligence claim No. 680 for 6.46 CFS of water from Birch Creek and Bunnell's Fork, located in Section 31, Township 5 South, Range 4 East, SLB&M, which are claimed tributaries of the Provo River, and that said water covered by said claim is beneficially used for irrigating respondent's lands, for the watering of livestock, and for culinary use, and that said water is used from the 1st day of April to the 31st day of October of each and every year on the lands of David Long located in Section 31, Township 5 South, Range 4 East.

2. That by virtue of said diligence claim and of use of said water prior to 1903, the said David Long has a legal right to use the waters of Birch Creek and Bunnell's Fork pursuant to said claim, and that said right emanates by way of diligence for many years prior to 1903, and continuous, open, notorious and adverse use since said time, and that the said David Long has, for many years prior to the date of this action, used said waters without interference from any other party, and that he and his predecessors have applied such waters to beneficial use for the purposes of irrigation, livestock watering and culinary use each and every year since prior to 1903.

3. That no other persons have on file with the State Engineer's

Office any other claim to the said waters of Birch Creek or Bunnell's Fork, nor are the waters decreed to anyone, and that the only alleged claim of the right to use said waters is by virtue of their flow as percolating waters into the Provo River and its tributaries; that the said defendant has himself, and by his predecessors, been diverting the waters of the said Birch Creek and Bunnell's Fork onto his lands since prior to 1903; that he and his predecessors have openly, notoriously, with an intent to adverse all other persons, and with claim of right, used such water prior to the time said Provo River decree was entered and subsequent to the time said decree was entered, continuously without protest from any person until this year, and have put the same to beneficial use. That the River Commissioner and the State Engineer have throughout the past 30 days endeavored through River administration to deprive David Long of all right to use said water, and the River Commissioner has constructed an artificial channel to divert said water to the Provo River in a manner never before used, and to prevent the said David Long from diverting and using said water.

4. That there is also a stream of water tributary to the Provo River known as the South Fork, located in Section 31, Township 5 South, Range 4 East, which traverses defendant's lands; that the said South Fork has for many years flowed in a natural channel across the lands of David Long, flowing upon and across the south side of said land; that in 1914 or thereabouts a high water artificial channel was dug across the north side of David Long's lands; that said channel is not a natural channel, but it has been used as a flood channel during high water; that the said David Long has taken his waters for as long as he has been the owner of said lands, and that his predecessors have taken said waters as far back as 1896 from the south portion of the channel traversing the lands of David Long, and that he has there diverted said waters onto his lands for beneficial use; that the said Provo River Water Commissioner in 1960 has required the waters of the South Fork

to be left in the said high water channel, and has let said water run therein; and that said water commissioner has refused David Long the right to let the waters run in the south channel, and to divert therefrom onto his land, even though the said David Long has a decreed water right for 1 CFS per 60 acres; but that, because of said refusal of said water commissioner to allow the waters to flow in their natural channel, and to allow David Long to divert water from the south channel onto the lands of David Long, he has been prejudiced and injured because he has not been able to irrigate his land.

WHEREFORE, the defendant David Long prays for an Order enjoining the State Engineer and the River Commissioner from interfering with the use of 6.46 CFS of water in accordance with his Claim No. 680, and that they also be enjoined from placing said water in the artificial channel recently constructed by the River Commissioner.

David Long further prays that the court Order the River Commissioner and the State Engineer to leave the waters of the South Fork in their natural channel, where it traverses the south portion of the lands of David Long, and for such other and further relief as appears just and equitable in the premises.

CLYDE & MECHAM

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Rec'd copy Aug 30, 1960

Vernon K. Hoyle  
Civ. Atty. Gen.

2888

FOURTH JUDICIAL DISTRICT COURT OF  
THE STATE OF UTAH  
IN AND FOR UTAH COUNTY

FILED

1968 OCT 19 11

MARK E. BOYACK, Clerk

*Henry Allen* Deputy